

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF
MESCALERO APACHE TELECOM, INC. FOR
CERTIFICATES OF FINANCIAL AND
TECHNICAL COMPETENCY, OPERATING
AUTHORITY, AND PUBLIC CONVENIENCE
AND NECESSITY AND FOR APPROVAL OF
INITIAL TARIFFS,

MESCALERO APACHE TELECOM, INC.,

Applicant,

And

IN THE MATTER OF THE APPLICATION OF
GTE SOUTHWEST INCORPORATED FOR
AUTHORITY TO DISCONTINUE SERVICE,

GTE SOUTHWEST INCORPORATED,

Applicant.

Utility Case No. 3364

FINAL ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") after a hearing on the merits of this case. Having heard and reviewed the testimony of the participants to this case and the statements and arguments of counsel, having reviewed the record herein, and being fully apprised of the premises, the Commission adopts the following *Final Order* in this case.

BACKGROUND

This case presents the Commission with a unique opportunity to help promote both telephone subscribership and infrastructure deployment for the Mescalero Apache Tribal community in New Mexico. According to the Census Bureau, only 47 percent of Indian tribal households on reservations and other tribal lands have a telephone.¹ This low percentage is consistent with the number of Mescalero Apache tribal households in Mescalero, New Mexico owning telephones, also around 46 %. (Tr. at p. 25). As stated in the Telecommunications Act of 1996, “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high[-]cost areas, should have access to telecommunications and information services”² In our view, this goal of promoting universal service, echoed in our own New Mexico Telecommunications Act, is served by the approvals granted herein to Mescalero Apache Telecom, Inc. (“MATI”). We look forward to working with the Mescalero Apache tribal community in closing the “digital divide” that currently exists between them and much of the rest of the State of New Mexico.

STATEMENT OF THE CASE

On May 15, 2000, GTE Southwest Incorporated (“GTESW”) filed its *Application* in Utility Case No. 3367 asking the Commission to issue an order authorizing GTESW to discontinue offering public telecommunications services in certain portions of the Mescalero, Alto and Ruidoso exchange areas it currently serves in the State of New Mexico. These exchange areas will hereafter be referred to as the “Sale Territory.” GTESW’s *Application*

¹ *Housing of American Indians on Reservations – Equipment and Fuels*, Statistical Brief, Bureau of the Census, SB/95, April 1995 at 2 (based on 1990 Census data).

² See Pub. L. No. 104-104, 110 Stat. 56 (1996), amending the Communications Act of 1934, 47 U.S.C. § 151, *et seq.*

sought to discontinue such service to enable it to complete the sale of the Sale Territory to MATI in accordance with an Asset Purchase Agreement entered into by GTESW and MATI. GTESW's *Application* further requested a Commission determination that the sale was consistent with the public interest. (Tr. at 9, Ex. GTE-1 at 9.)

Also on May 15, 2000, MATI filed its *Application* in Utility Case No. 3364 asking the Commission as more fully detailed below to issue a *Certificate of Financial and Technical Competency*, and a *Certificate of Operating Authority to Provide Local Exchange Services in New Mexico*, in connection with its proposed acquisition of GTESW's Sale Territory. MATI proposed to furnish basic local exchange and exchange access services within the Sale Territory currently served by GTESW.

On May 17, 2000, GTESW filed a *Motion to Consolidate and to Enter a Procedural Order* requesting that Case Nos. 3364 and 3367 be consolidated. GTESW's Motion was unopposed.

On May 25, 2000, the Commission issued a *Procedural Order* setting the public hearing on the merits of the applications for July 20, 2000, establishing dates for the filing of interventions, testimony, conclusions of law and findings of fact, and, in addition, ordering GTESW to publish an attached *Notice of Hearing*.

On June 6, 2000, the Commission issued an *Order* consolidating Case Nos. 3364 and 3367 into a single proceeding with the caption set out above.

GTESW published the *Notice of Hearing* in the form attached to the *Procedural Order* in the following newspapers on the following dates: the *Albuquerque Journal* on May 30, 2000, the *Alamogordo Daily News* on June 2, 2000, and the *Ruidoso News* on June 2, 2000.

On June 23, 2000, a *Motion to Intervene* was filed by VALOR Telecommunications of New Mexico, LLC ("VALOR").

On or about June 30, 2000, GTESW mailed notice to its New Mexico customers in the Sale Territory, advising those customers that GTESW had agreed to sell its Sale Territory to MATI, subject to regulatory approval. (Tr. at 8-9.)

The following individuals submitted pre-filed testimony:

For GTESW

Carl Erhart, Direct Testimony

For MATI

Godfrey Enjady, Direct
Jaime Flores, Direct and Supplemental
Terri Nilson Baird, Direct

For VALOR New Mexico

Duffy Swan, Direct

For Commission Staff

Vincent DeCesare, Direct
Alicia Bernal, Direct
Jose R. Martinez, II, Direct

On July 10, 2000, the Commission issued an *Order Modifying Procedural Order* which changed the location of the hearing on the merits from a site in Santa Fe, New Mexico to a site on the Mescalero Apache Reservation for the express purpose of ensuring greater public participation by those persons most affected by the GTESW and MATI applications. GTESW published the *Amended Notice Changing Location of Hearing* in the form attached to the *Order Modifying Procedural Order* in the following newspapers on the following dates: the

Albuquerque Journal on July 13, 2000; the *Alamogordo Daily News* on July 13, 2000; and the *Ruidoso News* on July 13, 2000.

The hearing began and concluded on July 20, 2000. The following persons entered appearances in this proceeding:

APPEARANCES

For Commission Staff

Avelino Gutierrez, Esq.

For GTESW

William P. Templeman, Esq.

MATI

David S. Cohen, Esq.

For VALOR

Joseph Van R. Clarke, Esq.

During the course of the hearing, the following witnesses were called and examined:

For GTESW

Carl Erhart, Direct

For MATI

Godfrey Enjady, Direct

Jaime Flores, Direct and Supplemental

Terri Nilson Baird, Direct

For VALOR

Duffy Swan, Direct

For Commission Staff

Vincent DeCeasare, Direct
Alicia Bernal, Direct
Jose R. Martinez, II, Direct

GTESW and MATI jointly filed a *Proposed Form of Final Order* on July 31, 2000. Staff and VALOR did not oppose the *Proposed Form of Final Order*, and no person has opposed or challenged the relief requested in the proposed order.

SUMMARY OF PROCEEDINGS

In 1996, the Mescalero Apache Tribe approached GTESW about purchasing GTESW's local telephone exchange facilities on the Mescalero Apache Reservation. On August 29, 1997, GTESW signed a letter agreement with the Mescalero Apache Tribe that established a purchase price of four hundred thousand dollars (\$400,000) for then existing GTESW facilities on the Reservation, subject to future negotiations of mutually acceptable contracts. (Tr. at 7-8; Ex. GTE-1 at 3.)

On September 3, 1999, GTESW and VALOR (then known as d/b/a New Mexico Operating Co., LLC) entered into an agreement whereby GTESW agreed to sell all of its New Mexico assets to VALOR. The agreement between GTESW and VALOR includes a provision that acknowledged the 1997 letter agreement between GTESW and the Mescalero Apache Tribe and further provided that GTESW could continue negotiations for a definitive sale agreement with the Mescalero Apache Tribe. (Tr. at 8; Ex. GTE-1 at 4.)

Effective February 17, 2000, GTESW and MATI entered into an asset purchase agreement (the "Asset Purchase Agreement") for the purchase and sale of GTESW's operating facilities and equipment in the Sale Territory. (Tr. at 8; MATI Ex. 2.) More particularly, the proposed sale to MATI includes all of the facilities located in GTESW's Mescalero exchange,

except those access lines served by the Bent, New Mexico remote line group. The proposed sale also includes those portions of the Ruidoso and Alto exchanges located on the Mescalero Apache Reservation, as well as the portion of the Alto exchange facilities located on the United States Forest Service property serving the Ski Apache resort operated by the Mescalero Apache Tribe as licensee. A boundary map of the proposed MATI service territory was submitted into the record. (Tr. at 18; MATI Ex. 3.) In addition, under the Asset Purchase Agreement, subject to United States Department of Agriculture, Rural Utilities Service ("RUS") approval, MATI will purchase from GTESW a new digital fiber transport route located on the Reservation. (Ex. GTE-1 at 5, Tr. at 31-32.)

The GTESW-MATI transaction is not anticipated to close until after VALOR has closed its transaction with GTESW. However, if the GTESW-MATI transaction closes first, GTESW and VALOR have agreed that the scope of the assets and authorizations which are the subject of their asset purchase agreement will be modified to exclude the assets, authorizations and partial exchanges purchased by MATI. The agreement between GTESW and VALOR provides that if the GTESW-VALOR transaction closes prior to the GTESW-MATI transaction – which is the most likely scenario – the assets included in the MATI agreement will be transferred to VALOR upon closing of the GTESW-VALOR agreement. The Asset Purchase Agreement between GTESW and MATI will then be assigned by GTESW to VALOR and VALOR will assume all the rights, obligations and responsibilities of GTESW and will close the transaction with MATI. (Ex. GTE-1 at 6; VALOR Ex.-1 at 3; Tr. at 54-55; MATI Ex. 1 at 5.) If the GTESW-VALOR transaction fails to close, the GTESW-MATI transaction will not be affected by the failure. (MATI Ex. 1 at 5.)

The GTESW-MATI Asset Purchase Agreement requires the parties to obtain necessary authorizations from this Commission as a condition of sale. (MATI Ex. 2, Section 4.1.) Accordingly, GTESW filed its application to discontinue service in New Mexico, and MATI filed its application for authority to provide local exchange service in GTESW's Sale Territory. Upon closing of the transaction, GTESW proposes to discontinue its service in the Sale Territory and, at the same time, MATI proposes to begin providing service to the same customers in the same territory.

STATEMENT OF LAW

Legal Requirements to Discontinue Service, to obtain a Certificate of Public Convenience and Necessity, to Obtain a Certificate of Financial and Technical Competency and For a Certificate of Operating Authority to Provide Local Exchange Services in New Mexico.

Pursuant to the New Mexico Telecommunications Act, the Commission promulgated and adopted a Rule Imposing Registration Requirements for the Provision of Local Exchange Telecommunications Services within the State of New Mexico, codified in 17 NMAC 13.5 ("the LEC Rule"). The LEC Rule provides that an entity holding a certificate of public convenience and necessity to provide local exchange telecommunications services may discontinue its services only after ensuring continued quality of service and protection of consumer interests by notifying the Commission of (i) the number of customers affected, (ii) the form of notification to be given to each customer, (iii) the procedures for handling any customer deposits and outstanding debts to local exchange carriers or other carriers prior to and after discontinuance of service, and (iv) the arrangements made for alternative service for the entity's local exchange service customers. 17 NMAC 13.5.17.

In addition, the New Mexico Telecommunications Act requires a telecommunications company seeking to provide intrastate public telecommunications services within this state to obtain from the Commission a certificate demonstrating that the operation “is in the present or future [a] public convenience and necessity.” NMSA 1978, Section 63-9A-6 B (1985). The Commission has the discretion under the New Mexico Telecommunications Act to determine “when and upon what conditions plant, equipment or services may be provided under certificates of public convenience and necessity, . . . and the commission may attach to the exercise of such rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require” NMSA 1978, Section 63-9A-6 C (1985).

Furthermore, the Rural Telecommunications Act, NMSA 1978, Section 63-9H-1 through 63-9H-14 (1999) requires a telecommunications company seeking to provide rural public telecommunications service in the state to obtain a certificate of public convenience and necessity. Under the Rural Telecommunications Act, the Commission is to consider a number of factors in determining whether to issue a certificate to provide rural public telecommunications services. These factors include 1) whether the applicant has sufficient financial resources to provide the proposed telecommunications service properly and continuously; 2) whether the applicant has competent and experienced management and personnel to provide the proposed telecommunications service; 3) whether the applicant is willing and able to conform to all applicable laws and the rules of the commission applicable generally to providers of telecommunications; and 4) whether any exemption, suspension or modification is available to any provider of the subject service in the subject area.

The LEC Rule further provides that no local exchange service may be offered in the state without a certificate of financial and technical competency ("CFTC") and a certificate of operating authority ("COA") from the Commission. To obtain a CFTC, an applicant must demonstrate that: (1) its financial resources will "support provision of local exchange services in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interests," 17 NMAC 13.5.10.2.1; and (2) it possesses the technical competence to provide the local exchange services, 17 NMAC 13.5.10.2.2. To obtain a COA, an applicant must demonstrate that its proposed services will: "(1) ensure continued quality of service; (2) preserve and advance universal service; (3) safeguard the rights of consumers; (4) protect the public health, safety and welfare; (5) protect the public interest; and (6) provide service at rates that are just and reasonable." 17 NMAC 13.5.12.1.

STATEMENT OF FACTS

A. Description of the Applicants

GTESW is a Delaware corporation authorized to do business as a foreign corporation in the State of New Mexico. GTESW is a certificated provider of "public telecommunications services," as defined in NMSA 1978, § 63-9A-3, and is a "telephone company," as defined in NMSA, § 63-7-1.1. (Ex. GTE-1 at 2.)

Pursuant to a *Certificate of Public Convenience and Necessity* issued by the New Mexico Corporation Commission, GTESW owns, operates and controls plant and facilities in New Mexico through which it currently provides public telecommunications services to customers in New Mexico. (Ex. GTE-1 at 2.)

MATI was formed by the Tribe for the express purpose for the acquisition and operation of a telecommunication system. (Application Ex. 2.) MATI was incorporated on February 16, 1999. MATI is a charter corporation incorporated under the laws of the Mescalero Apache Tribe and is a wholly-owned by the Tribe. As a charter corporation of the Tribe, MATI has the authority to waive sovereign immunity. (Application Ex. 2.) At the present time the Tribe has elected not to form its own regulatory agency, as has been done by other Tribes. (MATI Ex. 1, at 5.) If the Tribe eventually forms a regulatory agency, MATI would be subject to Tribal regulation. (Id.) At the present time, the Tribe believes the State of New Mexico has the expertise to assist MATI in assuring its financial integrity and overseeing the fair business practices between MATI and other telephone providers. (Id.) At the hearing, Mr. Enjady stated that MATI was waiving sovereign immunity and affirmatively accepting the jurisdiction of the Commission. (Tr. at 27.) MATI's waiver applies to MATI only and does not constitute a waiver of any sovereign rights or the sovereign immunity of the Mescalero Apache Tribe. (Id.)

B. Discontinuance of Service by GTESW

As noted above, GTESW mailed notice to all of its customers receiving service on the purchase exchanges advising that GTESW has agreed to sell the telephone properties identified in the Asset Purchase Agreement subject to regulatory approval. (Tr. at 8-9.)

The Asset Purchase Agreement provides that all liabilities, responsibilities and obligations relating to customer advances, customer deposits and construction advances are assumed by MATI at closing. (Tr. at 17; MATI Ex. 2, Section 2.4.1 (E).) The Agreement further provides that, within 30 days after closing, GTESW will transfer to MATI all customer

deposits together with any accrued interest, and MATI will thereafter hold, disburse and retain the deposits just as if it were GTESW. (Id., Section 10.7.)

The Asset Purchase Agreement also provides that MATI will assume all liabilities of GTESW relating to New Mexico properties beginning the day after the closing date, except GTESW's current liabilities as of the closing date, GTESW's long-term debt and debt to GTESW's affiliates, and all taxes, obligations to employees and litigation liabilities as of the closing date. (Id., Sections 2.4.1.) Prior to closing, GTESW or Valor will provide services in the ordinary course of business (Id., Section 5.2.1) and make no material changes to the business. (Id. Section 5.2.2.) Closing must occur within eighteen months after execution of the Agreement. (MATI Ex. 1 at 8.)

C. Approvals Sought By MATI

MATI seeks the following approvals from the Commission: (1) allowing MATI to file its initial tariffs on CD Rom and as a supplemental filing; (2) approving a certificate of technical competence and financial ability to operate a Rural Telephone Company pursuant to law; (3) approving a certificate of operating authority pursuant to law; (4) approving a certificate of public convenience and necessity pursuant to law; (5) designating MATI as an Eligible Telecommunication Carrier in the exchange area covered by the assets sale agreement with GTESW; (6) approving MATI's initial rates and tariffs; (7) approving the sale by GTESW of most of the Mescalero Exchange and portions of the Alto and Ruidoso exchanges to MATI; (8) finding that MATI is an incumbent rural telephone company pursuant to 63-9H-3I, NMSA 1978 (1999 Repl. Pamph.); (9) designating the local exchange area to be served by MATI; and, (10) finding that it is in the public interest for MATI to be granted study-area and price cap waivers

by the Federal Communications Commission ("FCC"); and, (11) for such other approvals or relief the Commission deems appropriate. (Tr. at 15; MATI Ex. 1 at 4-5.)

D. Services to be Provided by MATI

The local exchange telecommunications services to be provided by MATI are the same or similar to those currently provided by GTESW and are described with more particularity in MATI's proposed local exchange tariff. (Tr. at 39-41; MATI Ex. 6.) Subject to Rural Utility Service financing and the granting of certain Federal Communication Commission (FCC) waivers detailed below, MATI also intends to replace existing facilities, deploy more advanced services and construct a service center. These services will include the provision of universal service, all the basic subscriber services with added features such as Caller ID, call waiting, call forwarding, and advanced services such as internet services and broad band services. (MATI Ex. 4 at 10.) MATI anticipates employing eleven full-time employees to provide outside plant services and operate a service center. (MATI Ex. 1 at 13.)

MATI will provide service to residential and business customers with access lines totaling approximately 950 lines (MATI Ex. 5 at 3); 690 of these lines are residential. (Tr. at 26.) MATI intends to expand service to all remaining households on the Reservation through both wire and wireless solution. (Tr. at 24.) As indicated, MATI estimates that less than fifty percent of households are currently served. (Tr. at 26.) MATI's plans for expanded and enhanced services, such as its proposed construction of modern fiber optic and microwave facilities, will provide quality communication services to the Reservation as well as add potential for educational and medical interactive video capabilities. (MATI Ex. 1 at 6.) It will allow the Tribe to bridge the digital divide that exists between the Reservation and other communities. (Id. at 7.)

As Mr. Enjady testified, the availability of advanced telecommunication services will enable economic development and employment opportunity for Tribal citizens and assist in the maintenance of their health and safety. (Id., Tr. at 26.) At the present time, MATI does not expect to offer services to Off-Reservation customers. (Tr. at 35.)

E. MATI's New Mexico's Qualifications for a Certificate of Financial and Technical Competency.

1. Financial Qualifications

During the course of the proceedings, MATI submitted two Business Plans, (Tr. at 36-38; MATI Ex. 4, JF1 and MATI Ex. 4, JF3), its "A Loan Design Application" (Tr. at 37; MATI Ex. 4 JF2) submitted to the RUS and conditionally approved by the RUS (MATI Ex. 7 at 8; TNB2), and testimony concerning an alternative budget financing plan in the event its "A Loan Design Application" approval by RUS was not forth coming because of a failure to obtain necessary FCC waivers. (Tr. at 14-16, 19-22, 43, 50.) The FCC waivers include a study area freeze waiver, price cap regulation waiver, and certain Universal Service Fund regulations waivers. Under all three financing alternatives MATI will be able to meet the financial qualifications to operate as a telecommunication service provider under applicable Commission rules. (Tr. at 43.) Also during the course of the proceeding, MATI's initial source of interim financing failed. (MATI Ex. 5 at 3.) As discussed below MATI has developed a plan to address this failure and still become operational and economically viable.

MATI's ability to meet the objectives of its Business Plan to provide a state of the art telephone system on the Reservation is in large part dependent upon RUS funding. In turn, RUS funding at the "A Loan Application" amount of eleven million, five hundred thirty-four thousand, one hundred dollars (\$11,534,100) amount is contingent upon the timely receipt of the

FCC waivers. (MATI Ex. 7, TNB2.) The RUS loan proceeds will be used to fund the construction and operation of the state of the art telecommunication system. (MATI Ex. 4 at 4.) MATI was approved for a RUS hardship loan in the amount of \$5,000,000.00 at five percent interest. (Id. at 5.) The remaining loan amounts, \$4,285,000.00 from the RUS and \$2,249,100.00 from the Rural Telephone Bank, will bear interest at the applicable rate to each advance of loan funds based upon the average yield on outstanding obligation of the United States having a final maturity comparable to the final maturity of the advance. (Id.) Once the FCC waivers are obtained, MATI will be able within a very short period of time to draw upon the RUS loan. (Tr. at 21.) In the unlikely event the FCC waivers are not obtained, Ms. Baird, the RUS general field representative responsible for the loan, testified that the loan would be scaled back to assure the continued viability of MATI until such time as MATI obtained the necessary USF funding to support its Business Plan. (Tr. at 49-52.) Ms. Baird also testified that the last tribal group that came in for a loan from RUS was the Hawaiian Sandwich Isles and they obtained similar FCC waivers without a problem. (Tr. at 50-51.)

In the event the FCC waivers are not obtained, Mr. Enjady testified that MATI could still become operational and financially viable. Mr. Enjady stated that he recently obtained a commitment from an equipment vendor, Siemen's Corporation, to loan MATI at no cost a used digital switch in the immediate future to become operational by early October. (Tr. at 14.) He also stated that MATI had sufficient cash available and was in the process of obtaining a bank loan to allow MATI to proceed with its plans. (Id.) The installation of the used digital switch would allow MATI to provide better services than currently being provided by GTESW. (Tr. at 17.) MATI will negotiate purchase of a new switch from the vendor when RUS funding

becomes available. (Tr. at 20.) RUS is very favorable to these direct negotiations. (Tr. at 19.) Ms. Baird testified that she did not want to “let go” of this Project and that RUS will do everything they can to try to make the plans proposed by MATI happen. (Tr. at 54-55.)

Although Staff witness Vincent De Cesare in his direct testimony (Staff Ex. 1, De Cesare at 17) stated that MATI’s application should be conditioned upon receipt of RUS funding, interim financing, and FCC waiver approvals, he modified his recommendation during the hearing. Mr. De Cesare stated that based upon the testimony presented by MATI’s witnesses concerning FCC waivers and the provision of the switch by the Siemen’s Corporation, the Staff’s concerns regarding the FCC waivers or the interim financing had been mollified. (Tr. at 60.)

As indicated, Commission rules require that an entity seeking a CFTC provide information showing the applicant’s financial resources “support provision of local exchange services in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interests.” 17 NMAC 13.5.10.2.1.³ While it appears that MATI should be a financially viable telecommunication company under the various financing and Business Plans submitted and testified to in this proceeding, the Commission is concerned that the company has yet to conclude and implement an interim financing solution. In addition, the failure of the company to obtain the USF waivers it seeks – a factor not in the Commission’s control - will seriously undermine MATI’s investment plans. As stated at the hearing, the denial of the USF waivers sought by MATI would delay the build out phase of the project by two years. (Tr. at 15.) In addition, denial of the waivers would also remove the single largest revenue

³ Similarly, the Rural Telecommunications Act requires the Commission to consider whether the applicant “has sufficient financial resources to provide the proposed telecommunications service properly and continuously.” NMSA 1978 Section 63-9A-5 E (1) (1999).

stream relied upon by the company – federal universal service funds that approximate \$1.6 million per year. (MATI Ex. 5, schedule 4).

Notwithstanding these concerns, the Commission acknowledges the commitment by MATI to improve telecommunications services in its proposed service territory. MATI intends to utilize a borrowed digital switch, if necessary, to not only ensure the continued “quality of telecommunications services” but actually improve services. The company indicates that it has sufficient cash on hand to be operational, and that it is in the process of obtaining necessary loans. RUS, as demonstrated by the testimony of T. Baird, appears to be willing to stand behind MATI. These factors, under these unique circumstances, provide some comfort to the Commission.

However, the Commission will require MATI to provide to it a revised business plan should it not obtain the FCC waivers. While the Commission is confident that MATI will obtain its FCC waivers, as well as its RUS funding, the Commission must have accurate information in the event such waivers or funding are delayed or are denied. Accordingly, the Commission will require the filing of a revised business plan, as in the form attached to the Supplemental Testimony of Jaime Flores, demonstrating the operation of Apache Telecom utilizing projected revenues and expenses absent FCC waivers. The business plan must be for a ten year period, utilize the most up-to-date information, and shall reflect the terms and conditions of any internal cash outlays, switch leases, or loans (RUS or otherwise) actually put in place by MATI in becoming operational or projected to be put in place by MATI. The revised business plan must be filed with the Commission within 120 days following the close of the proposed sale/transaction if during that time period the FCC has not granted all the requested waivers.

Depending upon the information contained in the revised business plan, if one is filed, the Commission may impose on MATI additional requirements or conditions necessary to protect the public interest.

2. Technical Competency

a. MATI's Management and Personnel

MATI's key management employees are: Godfrey Enjady, General Manager and Jaime Flores, Operations Manager. Mr. Enjady has fifteen years of telephone experience at both Contel and GTE. His job responsibilities included various jobs ranging from serving coin operated telephones to NEMAC Analyst. (MATI Ex. 1 at 1-2.) He was appointed General Manager of MATI's predecessor in 1995. (Id.) He has also attended training courses related to regulatory accounting and management and engineering. (Id.) He represents MATI before regulatory agencies, tribal legislature bodies and industry associations. (Id.) Jaime Flores has over twenty three years of telephone industry experience (MATI Ex. 4 at 1) working for both Contel and GTE. He has worked in most of the technical aspects of outside plant telephone ranging from operator services to central office technician. (Id. at 2.) He is responsible for managing the financial affairs of the Tribe's propane business and prepared MATI's Business Plan. (Id.) Ms. Baird, who has a substantial experience in the telephone business, testified that Mr. Enjady and Mr. Flores have a lot more in depth knowledge about how the telecommunications technology works than most of the managers she has met over the years who were with the larger telephone companies. (MATI Ex. 7 at 10.) In addition to Mr. Enjady and Mr. Flores, MATI intends to hire nine additional employees from both inside and outside the Reservation, and hire consultants and professionals as necessary. (MATI Ex. 1, p. 13-14.) Staff witness Ms. Bernal testified that Staff

believes that MATI has a qualified and experienced management team to oversee the provision of the proposed local exchange service. (Staff Ex. 1, Bernal at 7.) The Commission concurs.⁴

b. Back-Office Operations Support Systems

As a start-up company, MATI does not yet have in place all of the back-office support systems ("OSS") and procedures that an existing telecommunications company, such as GTESW, might have. Consequently, in order to ensure that MATI can take over GTE's operations in a timely fashion and provide continuous quality of services to its customers, MATI is negotiating both a back office agreement and interconnection agreements. (Tr. at 41-42.) The Commission will require MATI to advise it when those agreements have been finalized.

F. MATI's Qualification for a COA

1. Continued Quality of Service

Mr. Enjady testified that MATI will replace most of GTESW's existing system in place today with state-of-the-art digital switches connected by fiber optic cable that will be installed throughout the Reservation. (MATI Ex. 1. at 14.) Mr. Flores in his direct testimony listed the new facilities to be installed. (MATI Ex. 4 at 5) Those facilities included:

1. Acquire and upgrade the existing Mescalero Exchange from GTESW;
2. Replace the existing remote switching terminal with a new digital host switch to be located at the new headquarters site established on the reservation;
3. Provide toll recording, Equal Access, TR303, SS7, CLASS and wideband capabilities on the new host switch;
4. Upgrade the toll interconnect facilities to fiber optics from the proposed

⁴ The Commission notes that the Rural Telecommunications Act also requires the Commission to consider "whether the applicant has competent and experienced management and personnel to provide the proposed telecommunications service" in determining whether to issue a certificate to provide rural public telecommunications service. See NMSA 1978 Section 63-9H-6 E (2) (1999).

Mescalero central office to the proposed meet point (GTE & other carriers) with a fiber optic terminal at the new host switch;

5. Provide cabinetized, Next Generation Digital Loop Carriers (NGDLCs) to serve CSA sites throughout the reservation;
6. Provide fiber optic facilities to connect the CSA equipment to the host;
7. Provide microwave equipment to connect services to outlying NGDLCs which cannot be economically supported by fiber optics;
8. Provide copper distribution plant for communications service to new customers as well as plant upgrade and reinforcement to existing customers;
9. Provide a new building for the headquarters facility, including headquarters, customer service, central office and warehouse facilities;
10. Provide a standby power generator at the headquarters/central office and portable standby power generators for NGDLC support;
11. Provide funds for the removal of the existing remote switch and retired plant;
12. Provide for a maintenance radio system;
13. Provide vehicles, work equipment, and test equipment for the operation of the communications company;
14. Provide funds for office furnishings and miscellaneous office equipment at the headquarters facility; and,
15. Provide funds for a computer billing system and a new CAD/GIS system.

As a result of the installation of these facilities and investment, MATI anticipates providing far superior service than currently available. (MATI Ex. 4 at 14.) The construction of the state of the art telecommunication facilities described above, the commitment to universal service to all residents of the Reservation, and the financial loans of RUS all ensure a continued quality of service.

Mr. Enjady further testified that MATI plans to provide service to areas that GTESW currently does not serve. (Tr. at 24-25.) In addition, the installation and use of digital switches and state-of-the-art electronic equipment along with fiber optics will provide quality communication services as well as provide the latest in communication technology. (MATI Ex. 1 at 14.) Staff witness Ms. Bernal concurred that MATI will continue to provide quality service to its customers. (Staff Ex. 1, Bernal at 9.) The record established that MATI will provide quality telephone service.

2. Preserve and Advance Universal Service

Mr. Enjady testified that the primary goal of the Mescalero Apache Tribe is to establish universal service to all residents of the Reservation by way of MATI's ownership and control. (MATI Ex. 1 at 15.) Ms. Baird testified that MATI is committed to providing access to all Reservation residents and MATI ownership will better meet the Reservation's telecommunication needs and requirements. (MATI Ex. 7 at 13.) Ms. Bernal testified that MATI's representations sufficiently address this requirement. (Staff Ex. 1 at 9.) The Commission concurs.

Mr. Enjady testified that MATI's marketing efforts as an LEC will be directed towards assuring that universal service and the bridging of the digital divide is a reality. (MATI Ex. 1 at 15.) At hearing, he explained that much of MATI's marketing will be by word of mouth. (Tr. at 24.) Because many of MATI's employees speak Apache this will be effective. (Id. at 30.) As required by both state and federal law, MATI must publicize the availability of Lifeline, Link Up, and Low Income Telephone Service Assistance programs in a manner reasonably designed to reach those likely to qualify for these services. *See Federal-State Joint Board on Universal*

Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, Twelfth Report and Order, (2000); NMSA 1978 Section 63-9C-1 (1998). The Commission is satisfied that MATI will be capable of accomplishing these goals. (Tr. at 26).

3. Proposed Services Safeguard the Rights of Consumer

Mr. Enjady testified that, as a Tribally owned enterprise, MATI is acutely aware of its consumers' rights. (MATI Ex. 1 at 15.) Its ultimate success will be measured by its ownership, the Tribe, in protecting and preserving those rights. (Id.) The availability of a central office and customer service office on the Reservation will enhance customer friendly and responsive service. (Id.) Ms. Bernal testified that MATI's tariffs address consumer rights, the areas of discontinuance of service, service installation and disputed bills. (Staff Ex. 1, Bernal at 10.) She concludes that MATI will meet the current standards to safeguard the rights of consumers. (Id.) The Commission concurs.

4. Proposed Services Protect the Public Health, Safety and Welfare

As noted in the testimonies provided in support of this *Application*, MATI will provide 911 service. MATI will also provide advanced educational and health telecommunication services not currently available from GTESW and provide lifeline rates. (Tr. at 26, 29-30.) Ms. Bernal agrees and states that MATI has met this requirement (Staff Ex. 1 Bernal at 10.) The Commission concurs.

5. Proposed Services Protect the Public Interest

The Commission concludes that overall the testimony presented in this case assures that the issuance of a certificate to MATI will protect the public interest because MATI desires to

provide improved local telecommunications service to the Reservation and, as previously discussed, substantially upgrade services on the Reservation and provide universal service. The Commission agrees that the Mescalero Apache Tribe should receive the same level of telecommunications service as experienced in other rural and urban regions of New Mexico.

With the new facilities proposed by MATI, MATI will further the public interest by offering innovative ways of packaging local telecommunications service plans and products to increase the choices available to its customers. The state-of-the-art technology will benefit New Mexico and Tribal consumers directly as a result of the exceptionally high service quality to be provided, and indirectly by enhancing New Mexico's economic development. In addition, the public interest will be furthered by expanding the availability of technologically advanced telecommunications facilities such as security, survivability and redundancy within the State of New Mexico. As the record establishes, MATI will not discriminate among consumers in the provision of local exchange service within its operating area and will provide high quality service on a full-time basis, twenty-four hours a day, seven days a week. (MATI Ex. 1 at 16.)

6. Provide Services at Just and Reasonable Rates

MATI proposes to adopt GTE's existing tariffs as applicable and which were modified by Valor in Case No. 3217. (MATI Ex. 5 at 4.) The rates in the tariffs were used to develop MATI's financial projections. (MATI Ex. 4 at 3.) MATI intends not to increase basic residential rates for at least 3 to 4 years. (Tr. at 36.) In Docket No. 94-291-TC, GTE's last general rate case, the Commission approved rates for basic dial tone service. (Staff Ex. 1, Bernal at 11.) The Commission approved a \$12.27 per month rate for residential customers and \$21.90 per month rate for business customers. (Id.) The final order was issued on April 13, 1995 for the revenue

requirement portion and December 27, 1995 for the rate design portion. (Id.) Because MATI is a start-up company and is acquiring a portion of GTE's access lines in New Mexico, Staff recommends that the Commission approve MATI's request to use the existing tariff rates approved for GTE. (Id.) Finally, Staff reviewed MATI's tariff for appropriate regulatory provisions. (Id. at 12.) Staff testified that it has no concerns with MATI's proposed tariff and recommends that the Commission approve MATI's proposed tariff. (Id.)

The Commission generally concurs with Staff's recommendations. However, the Commission is concerned about the possible rate affects of the proposed infrastructure investments being proposed and the need to keep rates at just and reasonable levels. Accordingly, the Commission will require MATI to keep all of its rates for basic residence, business local exchange service, intrastate switched access services, and all their other tarified rates at no higher than their current levels until January 1, 2005. Excepted from this requirement are all tarified rates for services that the Commission finds are subject to effective competition pursuant to NMSA 1978 Section 63-9A-8 (1985). MATI may not increase rates to account for inflation during this time period. After January 1, 2005, MATI may propose rate increases in accordance with the Rural Telecommunications Act of New Mexico. *See* 1978 NMSA Section 63-9H-7 (1999). The ability of MATI to offer lower local exchange, vertical and long distance service rates, or to offer special incentives, discounts, packaged offerings, temporary rate waivers or other promotions, or to offer individual contracts, as provided under the Rural Telecommunications Act, will not be affected by this requirement that tarified rates not exceed current levels.

G. MATI's Willingness to Ability to Conform to All Applicable Laws and the Rules of the Commission.

The Rural Telecommunications Act requires the Commission to consider whether the applicant is “willing and able to conform to all applicable laws and the rules of the commission applicable generally to providers of telecommunications.” *See* 1978 NMSA Section 63-9H-75 E (3) (1999). In its *Application*, MATI specifically stated that it “is willing and able to conform to the applicable laws of the Mescalero Apache Tribe, the Constitution and laws of the United States, the Constitution and laws of the State of New Mexico and the Rules and Regulations of the Commission.” In addition, MATI General Manager Godfrey Enjady testified that “MATI agrees to be regulated as any other business subject to NMPRC telecommunication regulation at the present time.” (MATI Ex. 1, p. 5, l. 17-18). The Commission is satisfied that these statements establish MATI’s willingness and ability to conform to all applicable laws and the rules of the Commission, and the Commission will order the same.

H. The Existence of Any Exemption, Suspension or Modification

The Commission is not aware of any specific exemption, suspension or modification available to MATI at this time.

I. Eligible Telecommunication Carrier (ETC) Designation

MATI seeks, as part of its application, Commission designation of MATI as an ETC. (*Application* at p. 9.) The Telecommunications Act of 1996 requires that in order for a local exchange carrier to qualify to receive USF support, it must be designated as an ETC by the FCC or the State in which it operates. With the designation as an eligible telecommunications carrier under Section 254.201(d), MATI will be eligible to receive universal service support in accordance with Section 254 of the Act.

Under Section 254, MATI must adhere to the requirements prescribed by the FCC for ETC status. The requirements include: (1) offering the services that are supported by federal universal service support mechanisms under subpart B of section 254.201 and 254(c) of the Act, by using its own facilities; and (2) advertising the availability of and charges for such services using media of general distribution. Subpart B of the FCC rules requires that MATI, as a local exchange carrier, provide the following services to its customers throughout its entire service territory: Voice grade access to the public switched network, local usage, dual tone multi-frequency signaling, single party service, access to emergency services, access to operator services, access to interexchange services, access to directory assistance and toll limitation services. *See* 47 U.S.C. Section 214 (e).

Once a carrier is designated an ETC and will receive support, the ETC "shall use that support only for the provision, maintenance, and upgrading of facilities and services for the support is intended." *See* 47 U.S.C. Section 254 (e). Designation of ETC status should serve the overall universal service principles contained in Section 254 of the Telecommunications Act of 1999. *See* 47 C.F.R. Section 54.313. These objectives include 1) quality service and just, reasonable, and affordable rates; 2) access to advanced service; and 3) access in rural and high cost areas. *See* 47 U.S.C. Section 254 (h). States are required to certify to the FCC that all federal universal service high-cost support will be used in a manner consistent with the Act. *See Ninth Report and Order*, CC Docket No. 96-45, para. 95-96.⁵

State requirements for becoming an ETC are the same as the federal requirements. NMSA 1978 Section 63-9H-6 D (1). In addition, State Rural Universal Service Fund Rule 17

NMAC 13.10.25 through 10.27 specify that the company requesting ETC status demonstrate that it meet the requirements established in 47 C.F.R. Section 54.207 and Section 214(e) of the federal act.

Mr. Flores testified that upon closing of the transaction with GTESW, MATI will be capable of providing the above services and will advertise such services and the associated charges, thus qualifying it as an eligible telecommunications carrier under law. (MATI Ex. 4 at 7.). Also, MATI intends to advertise the availability of its services and the charges to its customers and will be making or providing the federally required customer service to its customer. (MATI Ex 1, at 17).

Staff witness Mr. Martinez testified that in order for MATI to meet federal ETC requirements, MATI must have a designated service area that meets FCC rules, Section 54.207. (Staff Ex. 1, Martinez at 6.) He testified that MATI has provided a boundary map to mark the service area. (Id. at 7; See also MATI Ex. 3) He recommends that MATI's proposed service area should be designated by the Commission for determining USF obligations and support mechanisms. (Id. at 10.) He also recommends that MATI be accorded ETC designation. (Id.) Mr. Martinez also noted that MATI must comply or agree to comply with all of the applicable quality of service standards and consumer protection rules promulgated by the Commission. (Id.).

The Commission agrees that MATI has met its burden and should be accorded ETC designation pursuant to law. However, the Commission will require MATI to provide a more detailed map of its service territory, identifying the specific locations of the service territory, as

⁵ It should be noted that, at least with respect to rural universal service support mechanisms, the FCC intends to revisit the existing process by which costs are accounted and support measured. See *Universal Service Report and*

well as the specific location of the sale exchanges, through townships, sections, and ranges, as well as a specific legal description of the sale exchanges. MATI must provide such a map to the Commission within 30 days of this *Final Order*. In addition, the Commission will require MATI to provide verification to the Commission that it is implementing all the nine essential services required under 47 C.F.R. Section 54.101, as well as verification that it is implementing provisions for qualified lifeline customers. Such verification must be filed with the Commission within 60 days of this *Final Order*. The Commission furthermore orders MATI to comply or agree to comply with all of the applicable quality of service standards and consumer protection rules promulgated by the Commission, as well as all rules of the State Rural Universal Service Fund, 17 NMAC 1310.1 *et seq.* MATI must also submit annual reports to the Commission verifying that it continues to meet the requirements for designation as an ETC as well as submit all other lawfully required information to the Commission.

H. Incumbent Rural Telecommunications Carrier Designation

MATI in its Application seeks Commission designation as an incumbent rural telecommunications carrier. (*Application* at 9.) The record establishes that MATI's incumbency is derived from the existing carrier, GTESW, and that the number of access lines of 950 to 1500 is far below the maximum 50,000 lines which is required to be designated a rural telecommunication carrier under New Mexico law. *See* NMSA 1978, Section 63-9H-31 (1999). The Commission should grant this designation request, subject to the rate conditions imposed in paragraph F (6) of this *Final Order*. The Commission furthermore will require MATI to comply with all applicable quality of service standards and consumer protection rules promulgated by the Commission and applicable to incumbent rural telecommunications carriers.

I. FCC Waivers

As discussed throughout this *Final Order*, MATI's ability to provide state of the art telecommunication services to residents within its designated service territory is in large part contingent upon the waiver of certain of the FCC's rules. Specifically, MATI has filed its FCC application which requests the following waivers: (1) the FCC study area freeze; (2) FCC price-cap rules; and, (3) the waiver of Sections 36.11, 36.12 and CFR 54.305 pertaining to the timing and computation of USF receipts. (MATI Ex. 4 at 8-10.)

It is this Commission's opinion that the public interest of the State of New Mexico supports MATI's request for these waivers. The public interest of the State of New Mexico is fostered through the immediate and expedited provision of the enhanced and advanced telecommunication services which MATI seeks to provide on the Reservation. It is clear to us that the economic prosperity of the Reservation translates into the betterment of the overall economy of the State of New Mexico. The promotion of the health and safety of the Mescalero Apache Tribe and its residents promotes the overall well being of the people of the State of New Mexico. This Commission strongly endorses, supports, and encourages the FCC to grant the waivers requested by MATI in order to enable MATI to draw upon its RUS loan and commence providing state of the art telecommunication services within its designated service territory as soon as possible.

J. Sovereign Immunity

As discussed above, MATI, the company, has agreed to waive its sovereign immunity and affirmatively accept the jurisdiction of the Commission. (Tr. at 27). The Commission will require MATI to provide a written resolution from the Corporation, through its Board of

Directors, waiving its sovereign immunity, as provided for in Article IX of the Articles of Incorporation for Mescalero Apache Telecom, Inc.

The Commission appreciates the trust placed by MATI in the Commission and its willingness to comply with state rules, regulations and laws. The Commission acknowledges the unique trust relationship imposed upon the federal government in its dealings with Indian Tribes,⁶ and it too welcomes the opportunity to work with MATI and promote policies of self-government among tribal communities.

K. Other Approvals

MATI requests approval of its initial rates and tariffs (as well as their filing on CD), and the approval of the *Application* of GTESW to sell its facilities and cease operating the Sale Exchange. To the extent not otherwise discussed above, the Commission should approve these requests as well.

SUMMARY OF THE POSITIONS OF THE PARTIES

A. Staff's Position

Staff reviewed each of the *Applications*, the Testimony submitted in the proceeding, conducted discovery, and cross-examined witnesses at the hearing. Based on its review, Staff determined that GTESW has met the requirements to discontinue local exchange services to its customers in the Sale Territory (Staff Ex. 1, De Cesare at 22) and that MATI has the necessary qualifications and has met each of the requirements to be issued a CFTC and a COA and that the approvals sought by MATI should be granted. (Staff Ex. 1, Bernal at 12, Tr. at 63; Staff Ex. 1, Martinez at 10; Tr. at 67; Staff Ex. 1 De Ceasar at 18; Tr. at 60.)

⁶ See *Seminole Nation v. U.S.*, 316 U.S. 286, 297 (1942).

Staff also informed MATI that subsequent to receipt of operating authority from the Commission, the Company would be required to file with the Commission by April 1st of each year, annual reports regarding its local exchange service operating results within the state. The reports must be based on Generally Accepted Accounting Principles and must contain pertinent financial data of their operations. Additionally, MATI will be required to file annual carrier and utility fee reports pursuant to NMSA 1978, § 63-7-20. (Staff Ex. 1, De Cesare at 17-18.)

B. VALOR's Position

VALOR's testimony at hearing confirmed that, pursuant to the terms of VALOR's Asset Purchase Agreement with GTESW, VALOR has agreed to accept assignment of the purchase agreement between MATI and GTESW, and VALOR further has agreed to perform GTESW's obligations to MATI under the agreement. (Tr. at 54-55; Ex. VALOR Ex. 1 at 3.)

FINDINGS AND CONCLUSIONS

In conclusion, the *Applications* of GTESW and MATI are well-taken and should be approved. The Commission **FINDS** and **CONCLUDES**:

1. All findings contained in the Statement of the Case, the Law, Facts, and in the other sections of this *Final Order* are incorporated herein by reference as findings and conclusions of the Commission.

2. The Commission has jurisdiction over GTESW and the subject matter in this case pursuant to N.M. Const. Article XI, § 2, NMSA 1978, § 8-8-4 (1998), and NMSA 1978, § 63-7-1.1 (1998) and jurisdiction over MATI because of MATI's waiver of sovereign immunity in this proceeding.

3. GTESW is a certificated provider of public telecommunications services, as defined in NMSA 1978, § 63-9A-3, and is a “telephone company” as defined in NMSA 1978, § 63-7-1.1 (1998).

4. Notice of the hearings in this cause was legally adequate and proper.

5. GTESW has met the requirements of the Commission’s rules, 17 NMAC 13.5.17, and the New Mexico Telecommunications Act, NMSA 1978, § 63-9A-1, *et seq.*, to ensure continued quality of service and to protect consumer interests upon discontinuance by GTESW of service to customers in its Sale Territory.

6. MATI has demonstrated that its financial resources will support provision of local exchange services in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interest, and that it possesses the technical competence to provide the local exchange services.

7. MATI has demonstrated that its proposed services will: ensure continued quality of service; preserve and advance universal service; safeguard the rights of consumers; protect the public health, safety and welfare; and protect the public interest. 17 NMAC 13.5.10.2.1; 17 NMAC 13.5.10.2.2. 17 NMAC 13.5.12.1.

8. MATI has requested to render service under the applicable rates, terms and conditions of service now in effect for GTESW.

9. Granting to MATI a Certificate of Financial and Technical Competency and a Certificate of Operating Authority is in the public interest.

10. MATI should be designated as an ETC for the Sale Territory currently served by GTESW, described in the service territory boundary map submitted into evidence, as further described in the testimony, and as supplemented by MATI in accordance with this *Final Order*.

11. The sale by GTESW and the purchase by MATI of GTESW's telephone property and related assets in the Sale Territory in accordance with the Asset Purchase Agreement is just, reasonable, lawful, and in the public interest.

12. It is in the public interest of the State of New Mexico for MATI to be granted the waivers it seeks from the rules and regulations of the FCC as described more fully herein.

13. MATI is designated an incumbent rural telecommunication carrier under New Mexico law.

The Commission **ORDERS** that:

A. The *Applications* of GTESW and MATI, as filed, are consistent with the public interest.

B. Approval of the *Applications* of GTESW and MATI is in the public interest and, subject to the conditions imposed herein, are hereby approved.

C. Approval of all the requested relief in MATI's *Application*, subject to the conditions imposed herein, is in the public interest and is hereby approved.

D. As of the date of the closing of the sale transaction between GTESW and MATI described herein, GTESW shall be and hereby is authorized to discontinue providing public telecommunications services in its Sale Territory exchanges and is thereupon relieved of all obligations as a certificated provider of public telecommunications in the Sale Territory.

E. As of the date of closing of the sale transaction between GTESW and MATI described herein, a Certificate of Financial and Technical Competency and a Certificate of Operating Authority shall be and hereby is issued to MATI to provide basic local exchange and exchange access services as an incumbent rural telecommunications carrier within the Sale Territory currently served by GTESW. MATI is ordered to file with the Commission within 30 days of this *Final Order* a detailed map of its service territory, identifying the specific locations of the service territory, as well as the specific location of the sale exchanges, through townships, sections, and ranges, as well as a specific legal description of the sale exchanges.

F. MATI is hereby designated an ETC, with all attendant rights arising from ETC designation. However, the Commission orders MATI to provide verification to the Commission that it is implementing all the nine essential services required under 47 C.F.R. Section 54.101, as well as verification that it is implementing provisions for qualified lifeline customers. Such verification must be filed with the Commission within 60 days of this *Final Order*. The Commission furthermore orders MATI to comply or agree to comply with all of the applicable quality of service standards and consumer protection rules promulgated by the Commission, as well as all rules of the State Rural Universal Service Fund, 17 NMAC 1310.1 *et seq.* MATI must also submit annual reports to the Commission verifying that it continues to meet the requirements for designation as an ETC as well as submit all other lawfully required information to the Commission.

G. MATI is authorized to render service under the applicable rates, terms and conditions of service filed by MATI in this proceeding. However, the Commission orders MATI to keep all of its rates for basic residence, business local exchange service, intrastate switched

access services, and all their other tariffed rates at no higher than their current levels until January 1, 2005. Excepted from this requirement are all tariffed rates for services that the Commission finds are subject to effective competition pursuant to NMSA 1978 Section 63-9A-8 (1985). MATI may not increase rates to account for inflation during this time period. After January 1, 2005, MATI may propose rate increases in accordance with the Rural Telecommunications Act of New Mexico. *See* 1978 NMSA Section 63-9H-7 (1999). The ability of MATI to offer lower local exchange, vertical and long distance service rates, or to offer special incentives, discounts, packaged offerings, temporary rate waivers or other promotions, or to offer individual contracts, as provided under the Rural Telecommunications Act, will not be affected by this requirement that tariffed rates not exceed current levels.

H. MATI shall be bound by all applicable laws, regulations and rules pertaining to the provisioning of telecommunications services within the State of New Mexico, including but not limited to those referred to herein.

I. In the event MATI is unable to obtain necessary financing to close the transaction with GTESW and commence operations, MATI shall notify the Commission and seek such relief as is necessary. In the event the FCC does not approved the requested waivers, the Commission orders MATI to file a revised business plan, as in the form attached to the Supplemental Testimony of Jaime Flores, demonstrating the operation of Apache Telecom utilizing projected revenues and expenses absent FCC waivers. The business plan must be for a ten year period, utilize the most up-to-date information, and shall reflect the terms and conditions of any internal cash outlays, switch leases, or loans (RUS or otherwise) actually put in place by MATI in becoming operational or projected to be put in place by MATI. The revised business

plan must be filed with the Commission within 120 days following the close of the proposed sale/transaction if during that time period the FCC has not granted all the requested waivers. Depending upon the information contained in the revised business plan, if one is filed, the Commission may impose on MATI additional requirements or conditions necessary to protect the public interest.

J. MATI will file a Resolution from its Board of Directors within 30 days of this *Final Order* expressly waiving its sovereign immunity and affirmatively accepting the jurisdiction of this Commission.

K. MATI shall comply with all applicable consumer protection and quality of service rules promulgated by the Commission.

L. This *Final Order* shall be effective immediately.

M. Copies of the *Final Order* shall be served on Staff and the parties of record in Case No. 3364, and shall be mailed to the telecommunications service list.

N. This Docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 15th day of
August, 2000.

NEW MEXICO PUBLIC REGULATION COMMISSION


BILL POPE, CHAIRMAN


HERB H. HUGHES, VICE CHAIRMAN


JEROME D. BLOCK, COMMISSIONER


LYNDA M. LOVEJOY, COMMISSIONER

TONY SCHAEFER, COMMISSIONER



CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that I caused true and correct copies of **Final Order** issued August 15, 2000, in **Case No. 3364** to be mailed by first-class mail, postage paid, to the following persons:

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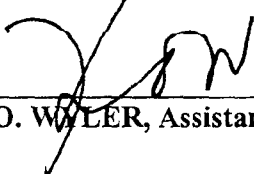
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DATED this 15th day of August, 2000.

NEW MEXICO PUBLIC REGULATION COMMISSION



KARL O. WELER, Assistant General Counsel